IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP.No.274/2002.

Date of Decision :21.3.2007

Shamsher Singh. ….Petitioner.

Versus:

Union of India and others. ….Respondents.

Coram:
The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] Yes.

For the petitioner: Mr.B.S.Ranjan, Advocate

For the Respondent. Mr.Anup Rattan, Central Govt. Counsel.

Sanjay Karol, J (Oral).

This judgment is being dictated in open Court in the presence of the learned counsel for the parties.

Facts leading to the filing of the present writ petition are as under:

The petitioner was appointed as Constable in a group centre SSB Delhi on 8th November, 1989. On 15th March, 1994, he is stated to have been involved in an incident at a group centre Headquarter, Ghitorni, which resulted into a

---

Whether reporters of Local Papers may be allowed to see the judgment?

initiation of departmental proceedings and service of memorandum dated 12th April, 1994 informing him of the charges, statement of article of charges, statement of imputation of dis-obedience/neglect of duty/remissness in the discharge of duty or misconduct in his capacity as a member of the Force. The charges are as under:-

"ARTICLE OF CHARGE-I

That the said No.8965960 Const/GD Shamsher Singh of D Coy GC SSB Delhi (Ghatorni) while serving as Const/GD and deployed on static guard duty with arm at R.P.Gate post on 15.3.94 at 2330 hrs was found standing away from his beat in casual manner. Thus he committed neglect of duty in his capacity as a member of force under Section 11 (1) of CRPF Act, 1949 and Rules, 1995.

ARTICLE OF CHARGE-II:

That the said No.8965960 Const/GD Shamsher Singh of D Coy GCSSB Delhi while on static guard duty with Arm at R.P.Gate post on 15.3.94 at about 2330 hrs refused to obey the good orders given to him by his Guard Commander No.7665131 Head Constable/GD Mast Ram. Thus, he committed disobedience of lawful command in his capacity as a member of force under Section 11 (1) of CRPF Act, 1949 and Rules, 1955.

ARTICLE OF CHARGE-III

That the said No.8965960 Const/GD Shamsher Singh of `D' Coy GC SSB Delhi while deployed on static guard duty with Arm. At R.P. Gate Post on 15.3.1994 at about 2330 hrs misbehaved/scuffled with his Guard Commander No.7665131 HC/GD, Mast Ram and used

criminal force resulting thereby injury to himself and HC/GD Mast Ram over the inner surface of upper lip on either side plus associated with contusion small abrasion on upper lip over left side. Thus he committed misconduct in his capacity as a member of force under section 11(i) of CRPF Act, 1949 & Rules, 1955".

The preliminary inquiry was fixed on 2nd May, 1994 when the petitioner (hereinafter referred to as delinquent officer) chose not to appear and the matter was adjourned for 3rd May, 1994. He was duly informed of the said date with notice that in the event of his not participating in the proceedings, the inquiry would be held ex-parte. He chose not to participate and the statements of some of the prosecution witnesses were recorded on 25th June, 1994, 27th June, 1994, 28th June, 1994 and 29th October, 1994. It is not in dispute that the petitioner was informed and also had knowledge of the said date(s) of hearing. The matter was also fixed for 7th November, 1994 for recording of defence statement which he did not avail of nor filed any documents. During the course of the inquiry, eight witnesses were examined and copy of the medical report of Mast Ram was also placed on record. It is also not in dispute that as and when the Inquiry Officer examined the witnesses their statements were duly supplied to the delinquent officer.

Vide letters dated 22nd June, 1994 and 25th June, 1994, the petitioner expressed his inability to appear before the Inquiry Officer as he refused to accept Shri Pritam Singh, Second-in-Command, G.C. SSB, Delhi as Inquiry officer. This representation of the petitioner is stated to have been forwarded by the Inquiry Officer to the Commandant, G.C.SSB, Delhi being Disciplinary Authority for information and necessary action. The Commandant (SG), G.C. SSB, Delhi vide letter dated 2nd September, 1994 dismissed the representation of the petitioner as being without any merit and further directed the Inquiry Officer Shri Pritam Singh, to continue to enquire into the charges. The factum of the rejection of the representation of the petitioner with regard to the change of the Inquiry Officer is not in dispute. It is not in dispute that even thereafter he chose not to participate in the proceedings. No action whatsoever is stated to have been taken by the petitioner thereafter except for sitting silent and watching the proceedings from the side. When the matter came up for hearing on 7th November, 1994 delinquent officer refused to participate and is stated to have thrown a copy of letter dated 3rd November, 1994 reiterating his request that he did not want the Inquiry Officer to carry on with the inquiry. Based on the material on record, the Inquiry Officer was left with no option but to decide

the proceedings ex-parte. Relevant portion of the findings are as under:-

(i) It is proved beyond doubt that No.8965960 Ct/GD Shamsher Singh (under suspension) did violate the standing orders by leaving his place of duty on 15/3/94 at 2325 hrs. as he was supposed to be behind the flowers pot stand to provide armed cover to the R.P. during opening the gate and checking of vehicles etc. whereas he was found about 15-20 yards away from his place of duty.

(ii) It is also proved beyond doubt that No.8965960 Ct/GD Shamsher Singh (under suspension) did not obey the lawful orders while on active duty on 15/3/94 at 2330 hrs because he failed to bring down his rifle, take out his shoulder straps and to put the quard in stand-to-position as ordered to him by his Guard Commander.

(iii) It is also proved, that No.8965960 Ct/GD Shamsher Singh (under suspension) mis-behaved/scuffled with the Guard Commander and used criminal force resulting injury to Guard scuffle on 15/3/94 at 2330 hrs."

The Inquiry Officer held that the witnesses have proved that the petitioner was scuffling with Head Constable Mast Ram and had to be separated and the witnesses had seen the petitioner hit Mast Ram on his face with blows, who

suffered injury on his face. The medical report given by the Senior Medical Officer confirmed the injury on the face of Mast Ram.

The said inquiry report undisputedly has been supplied to the petitioner by the Disciplinary Authority on 12th November, 1994. Inspite of having been given adequate opportunities no representation/reply was filed. Acting on the said inquiry report, the Disciplinary Authority took action and vide order dated 28.11.1994 petitioner was dismissed from service.

An appeal was preferred by the petitioner and vide order dated 16.11.1996 his appeal was dismissed by the Appellate Authority. Thereafter, three legal notices dated 11.12.1995, 16.4.1999 and 25.9.2001 were got served by the petitioner and vide reply dated 30.10.2001 respondent has replied to the petitioner notice dated 25.9.2001. It was inter alia clarified that the allegation of the petitioner against the Inquiry Officer is false in as much as Shri Pritam Singh was away on the date of the incident.

Shri B.S. Ranjan, while reiterating and not refuting the aforesaid facts has raised the following submissions:

(i) That Shri Pritam Singh could not have been appointed and continued as Inquiry Officer for the reason that he was a witness to the incident. He was biased and this alone would

vitiate the inquiry.(ii) That the principles of natural justice have been violated in as much as petitioner has not been given adequate and fair opportunity of participating in the proceedings. (iii) That even though the inquiry report has been supplied to him, however, before imposing penalty the Authority was duty bound to afford him an opportunity. (iv) That in any event the punishment is disproportionate to the offence alleged to have been committed by the petitioner and (v) That in relation to the entire incident, on the petitioner's asking an independent investigation was carried out by the respondents which completely vindicates the petitioner from any alleged involvement in the aforesaid incident (vi) that the inquiry report is based on surmises and conjectures and is liable to be set aside. In support of his contentions, he has relied upon ***Khem Chand Vs. Union of India and others*** AIR 1958 Supreme Court 300,***The Imperial Tobacco Company of India Ltd. Vs. Its Workmen*** AIR 1962 S.C. 1348,***Bhagat Ram Vs. State of H.P. and others*** AIR 1983 Supreme Court 454,***Ranjit Thakur Vs. Union of India and others*** AIR 1987 Supreme Court 2386, ***Smt.Indrani Bai Vs. Union of India and others*** 1994 (2) SLR 672, ***Bhim Singh Vs. Haryana State and others*** 1991 (3) SCC 721, ***Laxmi Shankar Pandey Vs. Union of India and others*** 1991 (2) SCC 488,***Kiran***

Aggarwal Vs.The Chief Secretary to the Government of H.P. and others 2002 (1) SLR 176, 2006 (4) SCC 713

In response thereto, Shri Anup Rattan , learned counsel appearing for the respondents has submitted that:(i) the petitioner's conduct is most unbecoming of a soldier of disciplined Armed Forces. (ii) The charges against the petitioner have been proved by cogent material on record with proper reasoning (iii) that adequate opportunity has been given to the petitioner from time to time and that there is no infraction of any rules or principle of natural justice at any point of time (iv) the penalty imposed is not disproportionate and is, in fact, warranted by the facts and circumstances. Petitioner being a soldier in the Armed Forces is necessarily required to always maintain discipline of highest order at all point of time.

He has relied upon ***State of U.P. Vs. Sheo Shanker Lal Srivastava and others*** (2006) 3 Supreme Court Cases 276 and ***Coats Viyella India Ltd. Vs. Commissioner of Central Excise*** (2005) 10 Supreme Court Cases 130.

I have heard learned counsel for the parties and gone through the record and proceed to decide as under:-

It is settled law that this Court would not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring

authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. As long as there is some legal evidence to substantiate the finding, the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings.

I shall first deal with the judgments cited by Shri B.S.Ranjan, learned counsel for the petitioner. They are totally irrelevant and distinguishable on facts.

Khem Chand v. **Union of India and others**, reported in AIR 1958 SC 300, deals with the unamended Article 311(2) of the Constitution of India. Since then there is a change in the position of law and the provisions of Article 311(2) of the Constitution of India have been amended in terms of 42nd Amendment Act, 1976. In the present case, undisputed fact is that various opportunities have been afforded to the petitioner to appear, cross-examine and lead evidence by the Inquiry Officer. The inquiry report is also admitted to have been received by the petitioner.

The Imperial Tobacco Company of India Ltd. v. Its Workmen, reported in AIR 1962 SC 1348, was a case where the dispute arose when the workman declined to cross-examine the witness and withdrew from the inquiry . The inquiry was closed and the Branch Manager passed the order

dismissing the workman from service. The order of dismissal was set aside on the ground that inquiry should have been concluded and not closed and only thereafter the order of dismissal could have been passed. This judgment is not relevant at all.

Bhagat Ram vs. State of Himachal Pradesh and others, reported in AIR 1983 SC 454, was a case where the delinquent officer was not informed of his right of appointment of an assistance in order to defend him before the Inquiry Officer. In these circumstances, the Court interfered under Article 226 of the Constitution to quash the order of imposition of penalty. This is not the case in hand.

Smt.Indrani Bai vs. **Union of India and others,** reported in 1994 (2) SLR 672 was a case where no opportunity was given to the delinquent officer to cross-examine the witnesses resulting into setting aside the order of dismissal. This is also not the case in hand.

Kiran Aggarwal vs. **The Chief Secretary to the Government of Himachal Pradesh and others,** reported in 2002(1) SLR 176, was a case that the High Court under Article 226 can interfere where the punishment on the delinquent officer is excessive, unreasonable, arbitrary and disproportionate to the charges levelled and proved. In the

present case, the allegations have been proved, they are grave and serious in nature.

Narinder Mohan Arya vs. **United India Insurance Co. Ltd. and others,** reported in (2006) 4 SCC 713, is on the point that the departmental proceedings are quasi criminal in nature and that the disciplinary authority must show proper application of mind in compliance with the requirements of law. This is not the case in hand also. Both the Inquiry Officer as also the Disciplinary Authority have given cogent reasons for taking the necessary action.

Ranjit Thakur vs. **Union of India and others**, (1987) 4 SCC 611, was a case where having regard to the antecedent events, the participation of the officer concerned in the court-martial rendered the proceedings coram non-judice, therefore, the Supreme Court set aside the order on the ground that there was likelihood of bias and reasonable apprehension in the mind of the delinquent officer that he would not get justice.

Perusal of the inquiry report shows that opportunity to appear and participate was given to the petitioner on 2.5.1994, 3.5.1994, 25.6.1994, 27.6.1994, 28.6.1994, 29.10.1994, 7.11.1994, 3.1.1994. Not only that even the statement of the prosecution witnesses recorded by the Inquiry officer were sent to the petitioner vide memo dated 27.6.1994

under proper receipt. When the delinquent officer desired change of the Inquiry Officer in terms of his letter dated 25.6.1994, his communication was sent to the Commandant, GC, SSB, Delhi being Disciplinary Authority for information and necessary action. The representation of the petitioner was rejected in terms of letter dated 2.9.1994 with a direction that Shri Pritam Singh continued to inquire into the Articles framed and he was informed of the same. Thereafter, when the remaining prosecution witnesses No.6,7 and 8 were cross-examined, the copies of their statements were also supplied to the delinquent officer. The delinquent officer was further given an opportunity to produce his defence statement, documents and witnesses, which opportunity was also not availed.

Admittedly, petitioner has not challenged the order of the Disciplinary Authority rejecting the petitioner's request for change of the Inquiry Officer. It is not a case where there is previous animosity or that the delinquent officer was either party to the incident, complainant or a witness. The request of the petitioner for change of Inquiry Officer was rejected as the Inquiry Officer was away on the date of the incident.

It would be pertinent to mention that on the complaint made by the petitioner against Shri B.S.Nagar, Commandant, an independent inquiry was got conducted by the Directorate General of Security office of the Director, SSB,

New Delhi. In the said inquiry, it has been categorically held that allegations levelled by the petitioner (Shamsher Singh) are false and frivolous and that the order of suspension and initiation of departmental inquiry against him is correct and justified. All these facts go to show that the plea of bias raised by the petitioner is false, incorrect, baseless and is bound to be rejected.

As already noticed hereinabove, adequate and fair opportunity of participation in the proceedings has been given to the petitioner, therefore, it would be incorrect to contend that principles of natural justice have been violated.

On the issue of punishment being disproportionate, the ratio of law laid down of the apex Court in **State of UP vs. Sheo Shanker Lal Srivastava and others,** reported in (2006) 3 SCC 276, is reproduced hereinbelow:-

> "22. It is now well settled that principles of law that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. It is now well settled that the High Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience."

In **Chairman and Managing Director, United Commercial Bank and others** vs. **P.C.Kakkar,** reported in (2003) 4 SCC 364, it has been held as under:-

> "12. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed."
>
> "15. ….. It needs no emphasis that when a court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law…."

It has been proved that Shamsher Singh, who was Armed Sentry was not standing on the specified place meant for the night Sentry. Head Constable/GD Mast Ram Guard Commander asked him the reason for not standing within the duty point to which the petitioner arrogantly replied. When the petitioner was asked to show magazine to verify whether the same was charged or not, the same was refused. Upon being further asked as to why the solider badge of his uniform was

not taken out as this amounted to a bad turn out, while on duty, he did not pay any heed. Petitioner was further asked to alter the guard at R.P. Post, which he failed to obey. Since the petitioner had not taken out the scabbard of the bayonet, he was asked to do so when an altercation/ scuffle took place between Shamsher Singh and Mast Ram.

Relying upon the statement of witnesses No.1 and 2, the Inquiry Officer held that the witnesses have proved that the petitioner was scuffling with Head Constable Mast Ram and were separated by them and that they had seen the petitioner hit Mast Ram on his face with blows and that Mast Ram suffered injury on his face. The medical report given by the Senior Medical Officer, confirmed the injury on the face of Mast Ram caused due to a blunt object.

The inquiry report is not based on surmises and conjectures. Inquiry Officer has given cogent reasons based on the relevant material before him. It has been conducted and concluded in an impartial manner in accordance with the principles of natural justice and the Rules. It is a reasoned order. I see no reason to interfere with the same. For the very same reason the order passed by the Appellate Authority is also not liable to be interfered with on merits.

No other point was urged by the learned counsel for the parties.

For the foregoing reasons, the writ petition is dismissed. However, there shall be no order as to costs.

21st March, 2007 (Sanjay Karol),
(R/C) Judge.